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# The Last Word: The Supreme Court Rules That Anna Nicole Smith Is Entitled to Nothing From Her Late Husband's Estate

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# Verdict

July 12, 2011

[Joanna L. Grossman](#)

## The Last Word: The Supreme Court Rules That Anna Nicole Smith Is Entitled to Nothing From Her Late Husband's Estate



In one of its last opinions of the 2010 term, the U.S. Supreme Court decided, in *Stern v. Marshall* (<http://supreme.justia.com/us/564/10-179>), that Anna Nicole Smith, a former *Playboy* model and minor television celebrity, will get nothing from the estate of her late husband, J. Howard Marshall II, a billionaire Texas oil tycoon.

This marks the end of a sixteen-year battle about whether J. Howard's son, Pierce Marshall, wrongfully interfered with his father's alleged plans to gift substantial sums of money and property to his new, and much younger, bride. In this column, I'll explain the history of the litigation, including how it got all the way to the U.S. Supreme Court (twice), and comment on why the Justices ruled as they did.

### The Course of the Extremely Long-Running Litigation

A lot can happen in sixteen years. As U.S. Supreme Court Chief Justice John Roberts noted in the opening paragraph of the majority opinion in *Stern*, the original parties have “died out of it,” and the “suit has, in course of time, become so complicated, that . . . no two . . . lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises.”

These words were not original to Chief Justice Roberts, of course; they are, instead, quotations from Charles Dickens's novel *Bleak House*. But the quotations are certainly apt.

The case was litigated in a Texas probate court. It was also litigated in a federal bankruptcy court in California. And the question whether the results in Texas or the results in California should trump made it through the federal appellate system multiple times, including two full-blown stops at the U.S. Supreme Court.

Amid those various stages of litigation, the dispute was transformed. It began as a fight between a bitter adult son and his father's third (and final) wife, whom he married at age 89 (when she was only 26), fourteen months before his death. Then it transmuted itself into a disagreement between the executors of two estates.

Pierce Marshall died from an infection in 2006. His death was not a big news item because, aside from his fierce defense of his father's estate, he did not lead a particularly public life.

In contrast, of course, when Anna Nicole (whose legal name was Vickie Lynn Marshall) died suddenly of a drug overdose less than a year later, in 2007, all cameras were trained on her life and death. (She left behind a five-month old daughter, along with a heated dispute among three men about that daughter's paternity, and various other legal disputes.)

Yet, despite the death of both parties, the battle raged on between Pierce's widow, Elaine Marshall, and Anna Nicole's ex-lawyer and ex-lover, Howard K. Stern, who are each executors of the respective estates. Had Anna Nicole ultimately prevailed, any money would have gone to her four-year-old daughter, Dannielynn, who was her sole heir. (Anna Nicole also had a son, but he passed away a few months before she did.)

### **The Origins of the Controversy between Anna Nicole and Pierce**

Anna Nicole Smith met J. Howard Marshall II in 1991 at a strip club. She was a dancer, who had been relegated to the day-shift because she was "big-boned"; he had been relegated to the day-shift, too, but by his age rather than his frame—he couldn't stay awake in the evenings.

They married in 1994. J. Howard died the following summer, but even before he passed away, Anna Nicole had filed an action in probate court to challenge Pierce's interference with J. Howard's control over his millions.

The litigation continued after J. Howard died. The gist of Anna Nicole's claim was this: When J. Howard asked Anna Nicole to marry him, he promised her half of his estate. But Pierce, fearing this exact outcome, took steps—wrongful ones—to tie up J. Howard's money such that he lacked the ability to gift it to Anna Nicole either during his life or upon his death.

Long before he and Anna Nicole met, J. Howard had set up a living trust to hold the bulk of his assets. After the marriage, however, the trust was converted to an irrevocable one, which meant J. Howard could not amend it to add her as a beneficiary, terminate it to free up the assets and make her a lifetime gift, or make a bequest to her of the amount allegedly promised. Anna Nicole alleged that Pierce engineered this change to the trust against his father's wishes, using wrongful means such as forgery, fraud, and false imprisonment.

### **Dueling Court Battles in Texas and California**

In 1996, Anna Nicole filed for voluntary bankruptcy in California, spurred by an \$850,000 default judgment against her in a sexual harassment suit filed by her former nanny. And here is where the dispute between Pierce and Anna Nicole truly got complicated.

Pierce filed a claim on Anna Nicole's bankruptcy estate, as a potential creditor. He alleged that she had defamed him by telling the world that he had wrongfully interfered with his father's plan to leave her a vast inheritance. And he wanted to make sure any damages he might be entitled to would not be discharged because of the bankruptcy.

In retrospect, this was clearly a tactical error on Pierce's part because it opened the door to a truth defense—Anna Nicole argued that there was no defamation, because, she contended, he had done every rotten thing she accused him of. She then filed a counterclaim for wrongful interference with the gift that she had expected to receive from J. Howard.

To resolve Pierce's claim as a creditor, the bankruptcy court also had to resolve Anna Nicole's counterclaim—a claim under Texas law, for tortious interference with an expected inheritance or gift. (Without Pierce's claim, the bankruptcy court could not have entertained her claim alone; her claim only could be swept in because it related to Pierce's claim.)

Resolution of Anna Nicole's claim involved many steps, but key to the final result was a ruling in December 2000, in Anna Nicole's favor. The bankruptcy court issued a final judgment to the effect that Pierce had, indeed

—as Anna Nicole had contended—wrongfully interfered with Anna Nicole’s possible inheritance and was liable to her for \$474 million.

Meanwhile, the same issue, more or less, was also being tried in a Texas court. And, after a five-month trial, in March 2001, the jury reached the opposite conclusion—Pierce, that jury found, had done nothing wrong; he was entitled to keep his inheritance, and Anna Nicole was entitled to nothing.

Then, almost exactly a year later, the federal district court in California ruled on an appeal from the bankruptcy court. It upheld the basic findings, but reduced the damages owed by Pierce to \$88 million.

So which of these rulings counts? The one saying Anna Nicole is entitled to \$88 million, or the one saying she is entitled to nothing?

This, it turns out, was the mother of all questions in this case, one that led to a full decade of continuous litigation. And despite all bets to the contrary, the parties—and then their executors—refused to settle.

### **Which Ruling Gets Priority? Complicated Questions about Jurisdiction**

Anna Nicole did not appeal the Texas ruling, but Pierce did appeal the California federal bankruptcy court ruling. And the appeal of that case is what led, ultimately, to the recent ruling in Pierce’s favor.

With two directly conflicting judgments on the table, and \$88 million at stake, it was necessary for a court to decide which judgment prevailed. The first time through the appellate process, the focus had been on jurisdiction. Pierce had successfully argued, before the Ninth Circuit Court of Appeals, that the federal bankruptcy court had never had jurisdiction to consider Anna Nicole’s claim of tortious interference in the first place, rendering its judgment void. He relied on the so-called “probate exception” to federal court jurisdiction. Anna Nicole then appealed this ruling to the U.S. Supreme Court.

For centuries, the Supreme Court has recognized a “probate exception” (as well as a “domestic relations exception”) to the exercise of federal “diversity” jurisdiction. This means, in effect, that even when the usual criteria for federal diversity jurisdiction are met—that is, when a case involves citizens of different states, and there is a sufficiently high amount in controversy—federal courts still cannot hear cases involving the probate of wills.

In *Marshall v. Marshall* (<http://supreme.justia.com/us/547/04-1544/opinion.html>) (2006), the Supreme Court ruled that whatever the scope of the probate exception, it was not implicated in this case. Justice Ginsburg’s majority opinion noted the “misty understandings of English legal history” relating to the exception, but ultimately concluded that the exception is limited to cases where the bankruptcy court probates or annuls a will or other testamentary instrument; assumes *in rem* jurisdiction over a particular piece of property; disposes of property already in the custody of a probate court; or otherwise directly interferes with the work of a probate court. Because none of these circumstances were applicable in Anna Nicole’s case, the Court concluded that the bankruptcy court was not barred from hearing the case.

The Court’s narrow construction of the probate exception is part and parcel of a standard view that says federal jurisdiction is not an opportunity, but an imperative. In other words, federal courts cannot refuse to exercise jurisdiction they hold. The Court’s opinion thus begins with a quote from an 1821 case, *Cohens v. Virginia* (<http://supreme.justia.com/us/19/264/case.html>): “It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.”

In sum, the obligation of federal courts to exercise their jurisdiction is a bedrock principle of law. Accordingly, the ability of federal judges to abstain from exercising jurisdiction is narrowly circumscribed by a set of relatively unflinching doctrines.

Notably, abstention doctrines (typically remembered by the case in which they were first announced such as the *Colorado River* abstention, the *Burford* abstention, and the *Younger* abstention) have often met the wrath of now-

retired Court veteran Justice John Paul Stevens. And here, Stevens would have gone even further than the Court: Stevens wrote separately in *Marshall* to urge that, rather than acknowledge the probate exception, the Court ought instead to “provide the creature with a decent burial.”

### **First in Time, First in Right**

With the probate exception out of the way, the question shifted to timing: which ruling came first, Texas’s or California’s? But the answer to this question, in turn, rested on another set of complicated questions.

The Supreme Court’s technical disposition of the case in *Marshall v. Marshall* (<http://supreme.justia.com/us/547/04-1544/opinion.html>) (Anna Nicole’s first trip to the high Court) was to send the case back to the Ninth Circuit for “proceedings consistent with this opinion.” What remained for the Ninth Circuit to decide was, since the bankruptcy court was not barred from considering the claim by the probate exception, which ruling came first. The first ruling would have preclusive effect on the second, and thus would control the actual outcome in the case.

But a ruling is “first” only if it is final, and only if it is issued by a court with the power to issue such a judgment. Pierce had also argued that the federal bankruptcy court lacked authority to issue a final judgment on the state-law tortious interference claim.

The Supreme Court had ruled that the federal bankruptcy court was not deprived of jurisdiction by virtue of the probate exception. But it did not rule on the argument that the federal bankruptcy court lacked the authority to issue a final judgment on a state law tort claim.

The answer to that question turned on whether Anna Nicole’s state-law tort claim was a “core” or “non-core” proceeding, with respect to her filing for bankruptcy. (Under the Bankruptcy Act, federal bankruptcy courts have the authority to issue final judgments on core claims, but only proposed findings on non-core claims. Proposed findings must be approved and made final by a federal district court, which stands above a federal bankruptcy court.)

In this case, the core/non-core distinction was crucial, because the bankruptcy court’s ruling in Anna Nicole’s favor came before the Texas jury verdict against her, but the federal district court’s affirmation of the ruling in her favor came after.

The district court took the view that the ruling on Anna Nicole’s counterclaim was non-core, which led it to conduct an independent review of the claim and, though it agreed that she was entitled to a judgment in her favor, to rely on an entirely different measure of damages. But the core/non-core issue was not considered on appeal, because the Ninth Circuit ruled instead on the basis of the probate exception, discussed above.

After being rebuked by the Supreme Court on the applicability of the probate exception, the Ninth Circuit then reached the question of whether Anna Nicole’s counterclaim was a core or non-core proceeding. In that ruling, the court held that, under the relevant section of the bankruptcy code, **28 U.S.C. § 157** (<http://www.law.cornell.edu/uscode/28/157.html>), a bankruptcy court may only issue a final judgment if the matter both “meets Congress’ definition of a core proceeding” and “arises under or arises in” the bankruptcy code.

In this view, counterclaims cannot be finally determined by a bankruptcy court unless they are “so closely related to [a creditor’s] proof of claim that the resolution of the counterclaim is necessary to resolve the allowance or disallowance of the claim itself.” And, according to the Ninth Circuit in a 2010 ruling, Anna Nicole’s counterclaim did not meet this test.

### **The Case Goes Back, Once Again, to the Supreme Court: The “Anna Nicole Usurpation”?**

The Supreme Court again granted review in this case—agreeing to consider whether the bankruptcy court had statutory authority to issue a final judgment on Anna Nicole’s claim and, if so, whether the statute itself was unconstitutional.

The Court's answer to both questions was "yes."

The Court ruled that Anna Nicole's claim was, according to the plain text of the statute, a core proceeding. Section 157 specifically provides that "counterclaims by the estate against persons filing claims against the estate" are core. Anna Nicole had brought just such a claim.

The Court rejected Pierce's argument that an additional requirement must be met. However, the Court went on to conclude that the designation of all counterclaims as "core"—with the implications that I discussed above for final judgments—was an unconstitutional usurpation of the power of Article III courts.

Article III of the federal Constitution provides that the judicial power "shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." It also provides that judges of such courts must be given life tenure, without any reduction in salary. Bankruptcy courts are so-called Article I courts, established pursuant to another provision of the Constitution. Unlike judges in Article III courts, bankruptcy judges hold 14-year terms, rather than life tenure.

In the Court's view, Article III is central to the system of checks and balances in our system and one of the touchstones of separation of powers. Congress cannot withdraw judicial power over any matter that was traditionally the "subject of a suit at the common law, or in equity, or admiralty." State law counterclaims, in its view, are just such suits unless they involve "public rights."

And, after a lengthy analysis of somewhat conflicting precedents, the Court concluded that Anna Nicole's counterclaim did not implicate any public right and, therefore, could not constitutionally be finally adjudicated by the bankruptcy court. To hold otherwise, the Court reasoned, would invade the constitutional sphere carved out for Article III courts.

The ruling in *Stern v. Marshall* was divided, 5-4. Justice Scalia concurred in the result, but wrote separately to question more broadly the constitutionality of bankruptcy court jurisdiction.

Justice Breyer wrote the [dissent \(http://supreme.justia.com/us/564/10-179/dissent.html\)](http://supreme.justia.com/us/564/10-179/dissent.html), which argues that the majority gave undue weight to certain precedents, while ignoring more relevant ones. The dissent also dismisses the majority's concern about a threat to the separation of powers, pointing to various structural protections that diminish any such intrusion.

Whoever is right on the merits of federal jurisdiction principles, the dissent is clearly right to worry that "a constitutionally required game of jurisdictional ping-pong between courts would lead to inefficiency, increased cost, delay, and needless additional suffering among those faced with bankruptcy."

### **Anna Nicole's Most Enduring Legacy: Her Celebrity or the Principles of Law Her Case Determined?**

It is perhaps ironic, given Anna Nicole's fast-paced, sometimes outrageous, life as a quasi-celebrity, that perhaps her most enduring legacy is the partial invalidation of the jurisdiction of federal bankruptcy courts. But her impact here, too, should be remembered.

Indeed, just as we have catchy names for the rules that do not allow Article III courts to abstain from the jurisdiction they have been granted, we ought to have one for the newly announced rule curbing the power grab by bankruptcy courts wading into Article III territory. How about the *Anna Nicole* usurpation doctrine?



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